

On June 6, 2006 at 3:38 a.m. PST, I was awakened by a telephone call. I answered a phone and it sounded as if a fax was attempting to connect. The call woke me up. It was on my unlisted home phone. I will provide that number to you in camera, if needed.

The Caller ID identified the caller as "The Hot Lead Co." at (818) 638-8049.

Unable to sleep due to the unsolicited phone call, I attempted to return the call. The number had a recording that said the number had been disconnected and there was no new number. I then "googled" the phone number and came up with <http://www.junkfax.org/fax/profiles/MyHotLeads.htm> about this company. I then ran the name "Hot Lead Co." and found this FCC Order:

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May 5, 2006

VIA CERTIFIED MAIL

RETURN RECEIPT REQUESTED

The Hot Lead LLC.

a.k.a. The Hot Lead Company

Attn: Mr. Greg Horne, President

16901 Dallas Parkway

Addison, Texas 75001

The Hot Lead Company

Attn: Mr. Greg Horne, President

1400 Preston Road #300

Plano, Texas 75903

Re: EB-06-TC-120

Dear Mr. Horne:

This is an official CITATION, issued pursuant to section 503(b)(5) of the Communications Act of 1934, as amended (the Act), 47 U.S.C. S 503(b)(5), for violations of the Act and the Federal Communications Commission's rules that govern telephone solicitations and unsolicited advertisements. As explained below, future violations of the Act or Commission's rules in this regard may subject you and your company to monetary forfeitures.

It has come to our attention that your company, acting under your

direction, apparently sent one or more unsolicited advertisements to telephone facsimile machines in violation of Section 227(b)(1)(C) of the Communications Act, as described in the attached complaint(s). Section 227(b)(1)(C) makes it "unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States . . . to use a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine." The term "unsolicited advertisement" is defined in the Act and the Commission's rules as "any material advertising the availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission." Under Commission rules and orders currently in effect, the Commission considers an established business relationship between a fax sender and recipient to constitute prior express invitation or permission to send a facsimile advertisement. Mere distribution or publication of a fax number, however, does not establish consent to receive advertisements by fax.

If, after receipt of this citation, you or your company violate the Communications Act or the Commission's rules in any manner described herein, the Commission may impose monetary forfeitures not to

exceed

\$11,000 for each such violation or each day of a continuing violation.

You may respond to this citation within 30 days from the date of this

letter either through (1) a personal interview at the Commission's Field

Office nearest to your place of business, or (2) a written statement. Your

response should specify the actions that you are taking to ensure that you

do not violate the Commission's rules governing telephone solicitation and

unsolicited advertisements, as described above.

The nearest Commission field office appears to be the Texas office,

Dallas, Texas; however, please contact Al McCloud at (202) 418-2499 if you

wish to schedule a personal interview. You should schedule any interview

to take place within 30 days of the date of this letter. You should send

any written statement within 30 days of the date of this letter to:

Kurt A. Schroeder

Deputy Chief

Telecommunications Consumers Division

Enforcement Bureau

Federal Communications Commission

445-12th Street, S.W., Rm. 4-C222

Washington, D.C. 20554

Reference EB-06-TC-120 when corresponding with the Commission.

Reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need including as much detail as you can. Also include a way we can contact you if we need more information. Please allow at least 5 days advance notice; last minute requests will be accepted, but may be impossible to fill. Send an e-mail to [1]fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau:

For sign language interpreters, CART, and other reasonable accommodations:

202-418-0530 (voice), 202-418-0432 (tty);

For accessible format materials (braille, large print, electronic files, and audio

format): 202-418-0531 (voice), 202-418-7365 (tty).

Under the Privacy Act of 1974, 5 U.S.C. S 552(a)(e)(3), we are informing

you that the Commission's staff will use all relevant material information

before it, including information that you disclose in your interview or

written statement, to determine what, if any, enforcement action is

required to ensure your compliance with the Communications Act and the Commission's rules.

The knowing and willful making of any false statement, or the concealment of any material fact, in reply to this citation is punishable by fine or imprisonment under 18 U.S.C. S 1001.

Thank you in advance for your anticipated cooperation.

Sincerely,

Kurt A. Schroeder

Deputy Chief, Telecommunications Consumers Division

Enforcement Bureau

Federal Communications Commission

Enclosures

47 U.S.C. S 227; 47 C.F.R. S 64.1200. A copy of these provisions is

enclosed for your convenience. Section 227 was added to the Communications

Act by the Telephone Consumer Protection Act of 1991 and is most commonly

known as the TCPA. The TCPA and the Commission's parallel rules restrict a

variety of practices that are associated with telephone solicitation and

use of the telephone network to deliver unsolicited advertisements,

including fax advertising.

We have attached the 6 complaints at issue in this citation. At least 147

additional similar complaints are not attached but are available from the

FCC's complaint database.

47 U.S.C. S 227(b)(1)(C); see also 47 C.F.R. S 64.1200(a)(3) (providing that no person or entity may . . . use a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine). Both the TCPA and the Commission's rules define "telephone facsimile machine" as "equipment which has the capacity to transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line, or to transcribe text or images (or both) from an electronic signal received over a regular telephone line onto paper." 47 U.S.C. S 227(a)(2); 47 C.F.R. S 64.1200(f)(8). The Commission has stated that "[t]he TCPA's definition of 'telephone facsimile machine' broadly applies to any equipment that has the capacity to send or receive text or images." Thus, "faxes sent to personal computers equipped with, or attached to, modems and to computerized fax servers are subject to the TCPA's prohibition on unsolicited faxes. . . [although] the prohibition does not extend to facsimile messages sent as email over the Internet." Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order, 18 FCC Rcd 14014, 14131-32 (2003) (2003 TCPA Report and Order).

47 U.S.C. S 227(a)(4); 47 C.F.R. S 64.1200(f)(10).

See Rules and Regulations Implementing the Telephone Consumer Protection

Act of 1991, Memorandum Opinion and Order, 10 FCC Rcd 12391, 12405 (1995)

(1995 TCPA Reconsideration Order); see also Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Order, FCC

05-132 (rel. June 27, 2005). Under the recently enacted Junk Fax Prevention Act of 2005, Pub. L. 109-21, 119 Stat. 359 (2005), Congress

amended the Communications Act to specify, among other things, the

conditions under which an established business relationship provides an

exception to the prohibition on unsolicited fax advertising.

1995 Reconsideration Order, 10 FCC Rcd at 12408-09; see also 2003 TCPA

Report and Order, 18 FCC Rcd at 14128 (concluding that mere publication of

a fax number in a trade publication or directory does not demonstrate

consent to receive fax advertising).

Federal Communications Commission DA 06-981

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Federal Communications Commission DA 06-981

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

References

I then called the gentleman at the FCC at around 5:15 a.m. my time and he advised me to file this complaint.

thank yoU!